



**New York StateWide Senior Action Council, Inc.**

**VIRTUAL RESIDENT FAMILY ACTION COUNCIL**

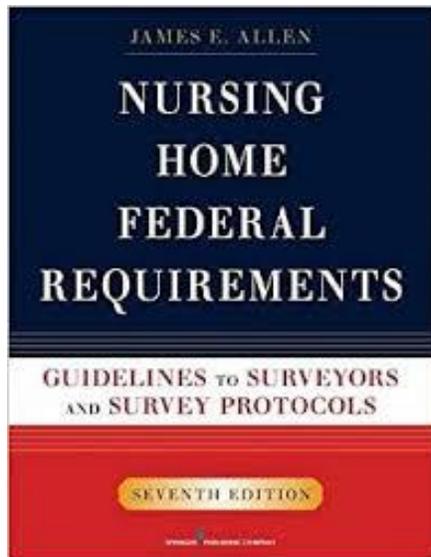
**SURVEILLANCE AND ENFORCEMENT**

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# MONITORING COMPLIANCE WITH REGULATIONS

- ❑ The Centers for Medicare & Medicaid Services (CMS) is the federal agency responsible for overseeing nursing home care paid for by Medicare and Medicaid funds.
- ❑ They are required to make sure that **federal** minimum standards are being followed.



- ❑ CMS contracts with the states to conduct monitoring and oversight and ensure compliance with federal quality standards.
- ❑ These activities are carried out by state survey agencies (SAs)—usually a state department of health or department of public health – which are paid to do this.

# MONITORING COMPLIANCE WITH REGULATIONS



- The New York State Department of Health (NYDOH) is the SA that has a contract with CMS to monitor facilities based upon the federal rules.
- NYDOH monitors those facilities not participating in Medicare or Medicaid programs and monitors all nursing homes using the state minimum rules and regulations (some state rules are more strict than the federal rules).
- Primary activities of an SA include surveying (inspecting) facilities, responding to complaints about care, and responding to facility-reported incidents.

# LONG TERM CARE SURVEY PROCESS (LTCSP)



# ***SURVEY SHOULD ASSESS:***

- Compliance with residents' rights and quality of life requirements;
- The accuracy of residents' comprehensive assessments and the adequacy of care plans based on these assessments;
- The quality of care and services furnished, as measured by indicators of medical, nursing, rehabilitative care and drug therapy, dietary and nutrition services, activities and social participation, sanitation and infection control; and
- The effectiveness of the physical environment to ***empower residents, accommodate resident needs, and maintain resident safety.***

# Offsite Survey Preparation

- Repeat deficiencies
- Results of last standard survey
- Complaints
- Variances/waivers
- Should* Contact ombudsman's office

# UPON ENTRANCE TO THE FACILITY

- Get a listing of residents with issues
- Facility *should* have signs announcing the survey in areas easily observable to residents and visitors, announcing that a survey is being performed and that **surveyors are available to privately meet with residents or their families/legal representatives.**

# PART I:

## INITIAL POOL PROCESS: Should take 8 hours

- A brief review of large samples of residents to determine which residents to include in the initial pool of residents  
Surveyors are to go room to room (quick) without staff (with info from MDS). Select about 8 residents
  - ❑ If a concern is identified, ask the resident questions
  - ❑ 70% offsite; 30% onsite by team
- For initial pool of residents:
  - ❑ Interview: 3 interviews of residents (or families) on first day
  - ❑ Observations (interactions, care, etc)
  - ❑ Limited Record Review

# SURVEY TASKS: GENERAL OBSERVATION

- ❑ The intent is to give the survey team an overall impression of the facility and the resident population being served.
  
- ❑ The team looks at:
  - Staff-resident interactions related to residents' privacy and dignity, including the **manner in which the staff responds to resident requests**, mood and behavioral symptoms, and **indications of need for staff attention**.
  - **Staff availability** - by identifying the licensed and registered nursing staff currently on duty.

# SURVEY TASKS: OBSERVATION

- Dining Observation: general observations of dining and food service.
  - Observation of full meal for all residents
- Sufficient and competent nurse staffing
  - Are concerns with staffing linked to resident expressed quality of life and care concerns?
- Infection Control
- Kitchen/Food Service Observation
- Medication Administration Observation
- Quality Assessment and Assurance (QAA) Review
- Resident Council President/Representative Interview

(Note: not mandatory at this time to help states catch up with surveys due to Covid infection control surveys)

# PART II: SAMPLE SELECTION

- Team meets to select the sample for investigation.
- A table directs how many residents can be in the sample
  - For a facility of more than 175, the initial pool size is 40 and the Sample size is 35.
  - For a facility of 150 residents, the initial pool size is 32 and the Sample size is 31.
  - The maximum number is 35.

# **PART III: INDEPTH INVESTIGATION**

**KNOW WHAT SURVEYORS ARE REQUIRED TO  
OBSERVE AND ASK ABOUT**

# PART III: INDEPTH INVESTIGATION

- A review of the physician's orders and care plan.
- Observe and interview staff to determine whether they consistently implement the care plan over time and across various shifts.
- During observations of the interventions, note and follow up on deviations from the care plan as well as potential negative outcomes.
- Observe care (e.g., AM care, wound care, restorative, incontinence care, transfers) if warranted for the investigation.
- If concerns are identified with areas such as pressure ulcers and incontinence, complete continuous observations to adequately determine whether appropriate care and services are provided in accordance with the care plan.

# RESIDENT INTERVIEWS: KNOW WHAT SURVEYORS ASK

☐ Surveyors must ask residents questions about:

- Choices

- Are you able to participate in making decisions regarding food choices/preferences?
- Do you participate in choosing your bedtime?
- Do you participate in choosing when to get up?
- Is this acceptable to you?
- Do you choose your dressing and bath schedule?
- Is this acceptable to you?



# RESIDENT INTERVIEWS

## Dignity

- Do you feel the staff treats you with respect and dignity?
- For example, does staff take the time to listen to you and are staff helpful when you request assistance?



# RESIDENT INTERVIEWS

## ☐ Activities

- Do you participate in any of the activity programs here?
- Do the organized activities meet your interests?
- Do you receive assistance for things you like to do, such as supplies, batteries, books? (Facility should have items available for residents to use.)
- Are there activities available in the evenings?



# RESIDENT INTERVIEWS

## Building and environment

- Is this a comfortable building in which to live? (Comfortable includes appropriate temperature, lighting, and noise levels.)
- Is the facility clean?

## Participation in care planning

- Have you been involved in decisions about your daily care?

# RESIDENT INTERVIEWS

## Abuse

- Have you been treated roughly by staff?
- Has staff yelled or been rude to you?
- Do you ever feel afraid because of how other residents are treated?



# RESIDENT INTERVIEWS

## Interaction with others

- Have there been any concerns or problems with a roommate or any other resident?
- Has the staff addressed the concern(s) to your satisfaction?

## Personal Property

- Have you had any missing personal items, such as clothing, jewelry, a radio, money, etc?
- If Yes: Can you tell me what is missing and for how long
- Do you have any idea of what might have happened to the item(s)?
- Did you report the missing property to staff?
- Is the property still missing?

# RESIDENT INTERVIEWS

## Pain

- Do you have any discomfort now or have you been having discomfort such as pain, heaviness, burning, or hurting with no relief?

## Food Quality

- Does the food taste good and look appetizing?
- Is the food served at the proper temperature?

## Hydration

- Do you receive the fluids you want between meals?



# RESIDENT INTERVIEWS

## Sufficient staff

- Do you feel there is enough staff available to make sure you get the care and assistance you need without having to wait a long time?

## Oral Health

- Do you have mouth/facial pain with no relief?
- Do you have any chewing or eating problems (could be due to: no teeth, missing teeth, oral lesions, broken or loose teeth)?
- Do you have tooth problems, gum problems, mouth sores, or denture problems?
- Does staff help you as necessary to clean your teeth?
- How often are your teeth/dentures/mouth cleaned (routine oral hygiene)?
- Does staff provide you privacy when they work with you, changing your clothes, providing treatment?



# RESIDENT INTERVIEWS

## Privacy

- Does staff provide you privacy when they work with you, changing your clothes, providing treatment?
- Do you have privacy when on the telephone?
- If you would have a visitor, do you have a private place to meet?

## Exercise of Rights

- Have you been moved to a different room or had a roommate change in the last nine months?
- Were you given notice before a room change or a change in roommate?

# RESIDENT INTERVIEWS

## Personal Funds

- Do you have a personal funds account with the facility?
- Does the facility let you know how much money you have in your account?
- Can you get your money when you need it, including on weekends?

# RESIDENT OBSERVATIONS

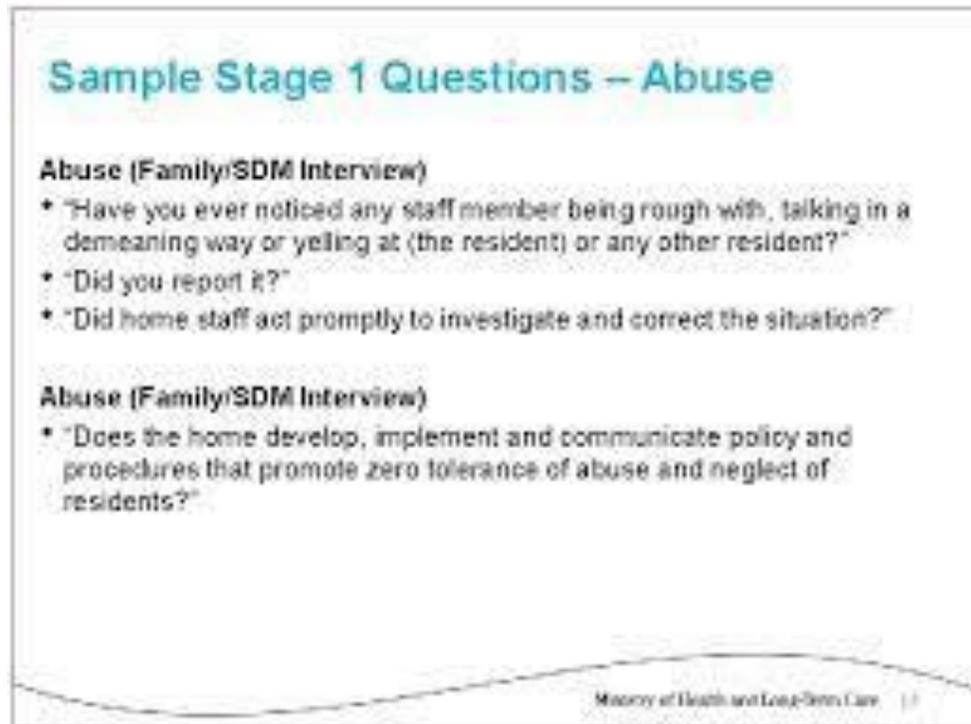
- Cleanliness/Grooming/Oral
- Incontinence (odor or wetness)
- Inappropriate or ripped clothing/foot coverings
- Active participation of residents in activities
- Contractures (use of splint devices)
- Abuse (staff yelling, striking, rough)
- Skin problems
- Physical restraints

# RESIDENT OBSERVATIONS

- Pain
- Dehydration
- Poor positioning
- Accident Hazards/Bed side rails
- Resident's room (odor, dirty, uncomfortable lighting, unsafe or uncomfortable temp, sound levels, insects)

# FAMILY INTERVIEWS: NON INTERVIEWABLE RESIDENTS

❑ If the resident is non-interviewable, a family member is chosen.



❑ Surveyors are required to talk to a resident labeled non-interviewable to find out if they are able to answer questions.

❑ Interviewable Resident --This is a resident who has sufficient memory and comprehension to be able to answer coherently the majority of questions contained in the Resident Interview.

# STAFF INTERVIEWS: KNOW WHAT SURVEYORS ASK

- Interview staff to determine how they inform residents or their representative of their rights and incorporate their personal preferences, choices, and goals into their care plan.
- When the resident request is something that facility staff feels would place the individual at risk (i.e., the resident chooses not to use the walker, recommended by therapy), is there a process in place to examine the risk/benefit and guide decision-making?

# STAFF INTERVIEWS

☐ Surveyors are asked to arrange an interview with the nurse who has frequent and direct contact with the group of residents being asked about by the surveyor.

- Catheter Use
- Nutrition
- Skin Care/Pressure Ulcers
- Side Rails
- Contractures
- Falls and Fractures

# STAFF INTERVIEWS

- Catheter Use

- What is the reason?
- Verified in the record?

- Contractures

- Does the resident receive range of motion services or have a splint in place?

- Nutrition

- Is the resident receiving a nutritional supplement?
- Verified in the record?

# STAFF OBSERVATIONS

- Review the resident's medical record to determine if facility staff included an *assessment of the resident's strengths and needs and whether these, as well as the resident's personal and cultural preferences, were incorporated when developing his or her care plan.*
- Determine **how facility staff observes and responds to the non-verbal communication of a resident who is unable to verbalize preferences** (i.e., if the resident spits out food, is this considered to be a choice and alternative meal options offered).

# END OF SURVEY

- After all investigations have been completed the team analyzes the results to determine whether noncompliance with the federal regulations exists.
- An exit conference is conducted, during which the nursing home is informed of the survey findings.
- The Ombudsman and an officer of the organized residents' group can be invited to the exit conference.

# RATING NON-COMPLIANCE

□ Once the surveyor identifies non-compliance or an instance of not following a rule, the surveyor rates the “scope” and “severity” of the problem.

□ **Scope:** How many residents did it affect?

- Isolated
- Pattern
- Widespread

# SCOPE LEVELS

## Isolated

- one or a very limited number of residents or employees is/are affected and/or a very limited area or number of locations within the facility are affected.

## Pattern

- more than a very limited number of residents or employees are affected, and/or the situation has occurred in more than a limited number of locations but the locations are not dispersed throughout the facility.

## Widespread

- when the problems causing the deficiency are pervasive (affect many locations) throughout the facility and/or represent a systemic failure that affected, or has the potential to affect, a large portion or all of the residents or employees

# RATING NON-COMPLIANCE

**Severity:** Did it cause harm?

Did it put residents in jeopardy of death or serious illness?

- No harm and no potential for serious harm
- No harm, but a potential for serious harm
- Harm
- Jeopardy

# SEVERITY LEVELS

- Level 1 - No actual harm with potential for minimal harm: A deficiency that has the potential for causing no more than a minor negative impact on the resident(s) or employees.
- Level 2 - No actual harm with a potential for more than minimal harm that is not immediate jeopardy
- Level 3 - Actual harm that is not immediate jeopardy:
- Level 4 - Immediate jeopardy to resident health or safety which needs immediate corrective action because the noncompliance with one or more of code requirements has caused, or is likely to cause, serious injury, harm, impairment or death to a resident receiving care in a facility or an employee of the facility

# SCOPE AND SEVERITY OF DEFICIENCIES

	ISOLATED	PATTERN	WIDESPREAD
Immediate Jeopardy To Resident Health Or Safety	J	K	L
Actual Harm That Is Not Immediate Jeopardy	G	H	I
Potential For More Than Minimal Harm	D	E	F
No Actual Harm With Potential For Minimal Harm	A	B	C

# ENFORCEMENT: NYS

- Under state law nursing homes can be fined up to \$2,000 per citation. These fines may be increased to \$5,000 if the same violation is repeated within twelve months and the violations were a serious threat to health and safety. These fines may also be increased up to \$10,000 if the violation directly results in serious physical harm.
- Ban on admission of private pay residents.

# ENFORCEMENT: CMS REMEDIES

- ❑ Any nursing home that does not achieve substantial compliance with the Federal requirements within six months must be terminated from participation in Medicare and/or Medicaid.
- ❑ A Denial of Medicare and Medicaid payment for any individual admitted to a nursing home that fails to return to substantial compliance within three months (Mandatory Denial of Payment for New Admissions, or DPNA).

# **ENFORCEMENT ACTIONS: CMS REMEDIES**

- Termination of the provider agreement;
- Temporary management;
- Denial of payment for all Medicare and/or Medicaid residents
- Denial of payment for all new Medicare and/or Medicaid admissions;
- State monitoring;
- Directed plan of correction;
- Directed in-service training.

# ENFORCEMENT ACTIONS: CMS REMEDIES

## ☐ Civil money penalties;

- Penalties in the range of \$3,050-\$10,000 per day are imposed for deficiencies constituting immediate jeopardy.
- Penalties in the range of \$50-\$3,000 per day are imposed for deficiencies that do not constitute immediate jeopardy, but either caused actual harm, or caused no actual harm, but have the potential for more than minimal harm.
- When penalties are imposed for an instance of noncompliance, the penalties will be in the range of \$1,000-\$10,000.

**FAMILY/LOVED ONES**

**INTERACTION WITH SURVEYORS**

# REQUIREMENTS OF CMS

- On the first day of a recertification survey, signs announcing the survey should be posted in high-visibility areas. Surveyors **can** interview the resident representative or family member by phone or in person (if they are available onsite at the time of the survey).
- CMS does not have any written process for the survey team to meet and speak to the family members who are in the facility during the recertification survey.
- If a family member who has a concern and wants to meet with the survey team in person, he/she/they are welcome to talk to the survey team directly. The family member can ask the facility staff where the survey team is located in the facility and speak to them directly.

If you have any additional questions or concerns, please forward them to the CMS NH Survey Development via email at [NHSurveyDevelopment@cms.hhs.gov](mailto:NHSurveyDevelopment@cms.hhs.gov).

# **NYSDOH: SUGGESTIONS**

- Once the recertification survey is initiated, there are signs posted that have the contact information for the Regional Office. Call that number and say you want to speak to the survey team.
- Inform facility staff you wish to speak with a member of the survey team and someone from the survey team will follow up.
- Ombudsman: The Regional Office notifies the local Ombudsman Office when the team is onsite.
- Once the Ombudsman is onsite, they can discuss any concerns they may have with the team.

# **NYSDOH: SUGGESTIONS**

- Make an official complaint with the Ombudsman through the Central Intake Line. Complaints are investigated on most annual surveys; therefore, many issues identified by the Ombudsman are actively investigated. Ask the Ombudsman to speak to the surveyor team about your complaint.

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Center for Health Care Provider Services and Oversight

Office of Primary Care and Health Systems Management

# HOW TO INTERACT WITH SURVEYORS

- ❑ Inform facility staff that you want to meet with a member of the survey team and someone from the team is supposed to follow up.
  
- ❑ The sign the surveyors post when they enter the facility, has the telephone number of the Regional Office. Call that Office and ask to meet with the survey team. If it is not on the sign, or there is no sign find your Regional Office here:
  - [DOH Regional Offices \(ny.gov\)](https://www.ny.gov/doh-regional-offices)
  - Look up your DOH Regional Office before a survey to be prepared.

# HOW TO INTERACT WITH SURVEYORS

- ❑ Speak to your Regional Ombudsmen. They are *supposed to be* made aware of when a survey will or is taking place. If you made a complaint to the Regional Ombudsman Coordinator, ask her/him to recommend that you be interviewed when the survey team is in the facility. The survey team is required to ask the Ombudsman for any issues.

State Operations Manual  
Appendix P - Survey Protocol for Long Term Care  
Facilities - Part I:

“Note any potential areas of concern reported by the ombudsman office and note resident names reported as potential sample residents, residents for closed record review, or family members for family interviews and the reasons for their recommendation by the ombudsman.”

- Find your regional ombudsman [Location Search | Office for the Aging \(ny.gov\)](#)

# PREPARE YOURSELF FOR AN INTERVIEW OR TO SPEAK TO A SURVEYOR

- Knowing what questions surveyors are required to ask residents or families they interview can help you prepare for the interview and make sure your issues are heard.
- Knowing what questions are being asked and what surveyors are required to **observe** can help a family member prepare for any interview or complaint they may want to make.

# STEPS TO FIND SURVEY FINDINGS: NYS

1. Go to: [NYS Health Profiles: Nursing Homes](#)
2. Search for your nursing home
3. Click on your nursing home's name.
4. Click "Inspections" over your nursing home's name.
5. Click on "Citations." You will see the type of deficiency, the numbers of deficiencies in the facility and the statewide average of deficiencies over the last few years.
6. Scroll down and find the date of your survey.
7. Click on "View full details" in the box listing the date the of the survey and you will be able to read the actual surveyor findings, the severity and scope and the plan of correction the facility has promised.
8. Go back one page, scroll all the way down and Click on "Enforcement," after all the dates of the surveys and you will see if any penalties have been put on the facility for the last few years.

# HOW TO FIND SURVEY FINDINGS ON CMS WEBSITE

1. Go to: Nursing Home Compare – Medicare.gov
2. Put in zip code, click on nursing homes and put in the name of the home
3. Click on “View Inspection Results” under, “Health Inspections”
4. You will see the deficiencies for each survey by date.
5. You can actually see the actual report by clicking on: “View Full Report.”
6. Scroll down and click on: View Penalties Detail to see any Federal Fines.

# Resources: Resident, Family and Staff Interview Forms: Copy and paste into your browser

- [PDFfiller-CMS-20049 Family Interview.pdf](#)
- [PDFfiller-cms resident interview and observation\(1\).pdf](#)
- [PDFfiller-cms 20051 staff interview\(1\).pdf](#)

# CMS Details of Survey Process

❑ [LTCSP Procedure Guide \(cms.gov\)](#)

❑ [Nursing Homes | CMS](#)

❑ [SOM \(cms.gov\)](#)

- [https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/som107ap\\_p\\_ltcfpdf](https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/som107ap_p_ltcfpdf)

❑ [quality-indicator-survey-surveyor-training.pdf](#)

❑ [Medicare State Operations Manual \(cms.gov\)](#)

- <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c07pdf.pdf>

# LET US KNOW YOUR EXPERIENCES

## MEETING WITH SURVEYORS SURVEYING YOUR FACILITY

### ■ **SIGN:**

- Was there a sign announcing the survey when you walked into the facility?
- Was the sign in a high-visible area?
- Did the sign have the telephone number of DOH regional office?

### ■ **Asking Staff:**

- Did you ask a facility staff member to tell the team you wanted to speak to them?
- Did staff agree to tell the team that you wanted to meet with them?
- Did a member of the team meet with you because a facility staff member told them of your request?

# LET US KNOW YOUR EXPERIENCES

## ▪ DOH REGIONAL OFFICE:

- Did you have to call the DOH Regional office to ask for a meeting with the team?
- Did the DOH Regional Office take your request?
- Did a member of the team meet with you because the DOH Regional Office contacted the team?

## ▪ REGIONAL OMBUDSMAN:

- Did you make an official complaint with the Regional Ombudsman?
- Did you ask the Regional Ombudsman to discuss your case with the survey team?
- Did the Regional Ombudsman agree to raise your case?
- Did the Regional Ombudsman agree to suggest that you be interviewed?
- Did you meet with a member of the survey team because the Ombudsman suggested it?

- If you did meet with a member of the survey team, did you have the time to discuss your issue?